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## FAQs

### *Frequently Asked Questions about Necessity for Brokerage Agreements*

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#### WHAT ABOUT BROKERAGE AGREEMENTS HAS CHANGED?

- Nothing is changed in terms of **when** a brokerage relationship is established; the threshold remains the same. Previously the law only required verbal disclosure of a brokerage agreement. The new law, effective July 1, 2012, requires that brokerage agreements with real estate clients be **in writing**.

#### WHEN DO I NEED TO USE A WRITTEN BROKERAGE AGREEMENT?

- As always, the law continues to require a brokerage agreement **when a brokerage relationship is created**. Now, however, the agreement must be in writing.
- “Brokerage relationship” is defined as “the contractual relationship between a client and a real estate licensee who has been engaged by such client for the purpose of procuring a seller, buyer, option, tenant, or landlord ready, able, and willing to sell, buy, option, exchange or rent real estate on behalf of a client.”

#### WHEN DOES A CUSTOMER BECOME A CLIENT?

- As in the past, when the customer becomes a client is based upon the party’s intent. A licensee needs to continue to exercise judgment based upon a customer’s words and actions to make a determination as to when the intent to enter into a brokerage relationship is established, thus triggering the requirement for a written agreement.
- Is the customer looking for the licensee to provide advice and counsel that requires his professional judgment or discretion for the purpose of engaging in a real estate transaction?
  - If YES, a written brokerage agreement is required because such acts go beyond the definition of ministerial acts (those routine acts not involving licensee discretion or the exercise of the licensee’s own judgment).
  - If NO, no written agreement is required.

## **IS A WRITTEN BROKERAGE AGREEMENT REQUIRED TO SHOW A HOUSE?**

- It depends on the party making the request and his intent. Showing a house may be ministerial if the licensee takes the customer to see typical features of homes in the market area, and therefore does not require the written agreement. However, if the party asks the licensee to show properties because his intent is to engage in a real estate transaction, a brokerage relationship exists and a written agreement is required.

## **WHAT FORMS ARE REQUIRED FOR COMPLIANCE WITH THE NEW LAW?**

- The new law does not add another form requirement. Any form that complies with the provisions of § 54.1-2138, "Disclosure of Brokerage Relationship," is acceptable.
- There is no Board-approved form. The Virginia Association of REALTORS® does offer standard forms for its members' use that comply with the legal requirements.

## **HOW WILL DPOR ENFORCE THE NEW LAW?**

- DPOR is a complaint-driven agency. As always, Board regulations grant agency investigators the authority to inspect or copy records that licensees are required to maintain.
- The Board no longer operates a random broker inspection program. DPOR always strives to promote compliance, not seek out opportunities for punitive disciplinary action.
- The new law does impose a mandatory self-audit provision for brokerage firms and sole proprietors every two years—but that provision does not become effective until January 1, 2013.